

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN SENATE JANUARY 5, 2004

SENATE BILL

No. 391

Introduced by Senators Florez and Escutia

February 20, 2003

An act to add Chapter 3.5 (commencing with Section 105230) to Part 5 of Division 103 of the Health and Safety Code, relating to public health, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Florez. Pesticide drift exposure.

Under existing law, the Department of Pesticide Regulation is charged with enforcing pesticide laws and regulations. Existing law establishes the Department of Pesticide Regulation Fund.

Existing law establishes reporting requirements relating to pesticide poisoning, and requires the Office of Environmental Health Hazard Assessment to develop and implement a program to alert physicians and others regarding symptoms, diagnosis, and treatment.

This bill would establish the Pesticide Drift Exposure ~~Prevention and~~ Response Act to be administered by the department for the purposes of providing education and training and reimbursement to *local emergency medical services providers and* health care providers for the costs associated with nonoccupational exposure to pesticide drift.

The bill would ~~authorize the Director of Pesticide Regulation to impose civil penalties against a person violating pesticide labeling,~~

~~pesticide drift, and pesticide use requirements set forth in the Food and Agricultural Code. The bill would establish the Medical Reimbursement Account within the fund, and provide for the direct deposit into the account of the civil penalty proceeds. The bill would, upon appropriation by the Legislature, make moneys in the account available to the department for expenditure for actual and projected medical costs associated with a pesticide exposure incident~~ *establish the Medical Reimbursement Account within the fund in which funds recovered for medical costs from persons responsible for a pesticide incident would be deposited.*

This bill would require the office to develop a program of medical education and training for health care providers and emergency medical services personnel related to pesticide drift exposure. This bill would require the ~~office~~ *California Environmental Protection Agency* to establish *minimum standard* protocols for these purposes and would require the certified uniform program agency or administering agency to amend the area plan for emergency response accordingly. By requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.

~~This bill would require the department to establish, assess, and collect a drift fee to be imposed upon the manufacturers and wholesalers of pesticides and impose a drift surcharge in an amount necessary to fund the department's cost of regulating the drift caused by restricted and nonrestricted use pesticides. The bill would deposit the proceeds into the fund from which annual deposits would be made into the Education and Administration Account that would be established by this bill within the fund. The bill would continuously appropriate the moneys in the account to the department to provide reimbursement for state and local agency costs associated with this bill.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

With regard to other nonreimbursed mandates, if any, this bill would provide that, if the Commission on State Mandates determines that the bill contains other nonreimbursed costs mandated by the state,



reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: ~~yes~~ *no*. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.5 (commencing with Section 105230) is added to Part 5 of Division 103 of the Health and Safety Code, to read:

CHAPTER 3.5. PESTICIDE DRIFT EXPOSURE ~~PREVENTION AND~~
RESPONSE

105230. (a) This chapter shall be known, and may be cited, as the Pesticide Drift Exposure ~~Prevention and~~ Response Act.

(b) The Legislature finds and declares all of the following:

(1) In prior years pesticide laws and regulations including use restrictions, pesticide posting requirements, buffer zones, and oral notifications have not adequately prevented all pesticide drift exposures.

(2) Unfortunately, large scale pesticide exposures on and off of the agricultural fields have continued to take place, primarily from natural offsite airborne movement or “drift” of pesticides.

(3) Pesticide drift incidents have repeatedly been inadequately handled by emergency response personnel and health care providers and inappropriate treatment of the victims of exposure has resulted.

(4) Lack of coordination among county and state agencies, little training in diagnosis and treatment of illness or conditions resulting from pesticide drift exposure, and lack of related funding have all contributed to the problem.

(5) The purpose of this chapter is to ensure that the victims of pesticide drift exposure receive immediate, comprehensive, and respectful attention during and following pesticide drift exposure incidents.

(c) For the purposes of this chapter:

(1) “Office” means the Office of Environmental Health Hazard Assessment.

(2) “Department” means the Department of Pesticide Regulation.

(3) “Certified Unified Program Agency” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20, within a jurisdiction.

(4) “Administering agency” means the local agency authorized, pursuant to Section 25502.

(5) “Agency” means the California Environmental Protection Agency.

~~(6) “Pesticide drift” means the physical movement of pesticide droplets, particles, or gas-phase chemicals away from the application site during and after a pesticide application. “Pesticide drift” includes spray droplets created during a pesticide application, gas-phase chemicals from fumigant applications or volatilization of applied pesticides, airborne dusts or powders, and pesticide-contaminated dust particles.~~

~~(7)–~~

(6) “Nonoccupational exposure to pesticide drift” means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

~~(8)–~~

(7) “Fund” means the Department of Pesticide Regulation Fund.

~~(9)–~~

(8) “Medical Reimbursement Account” means the account established within the fund pursuant to subdivision (d) of Section 105231.

~~(10) “Education and Administration Account” means the account established within the fund pursuant to subdivision (b) of Section 105237.~~

105231. (a) The department shall administer this chapter.

(b) The department, in conjunction with the State Department of Health Services *and stakeholders representing emergency services providers and health care providers*, shall by July 1, 2005, adopt regulations to coordinate a process for reimbursement of local emergency medical services response costs and health care provider costs, including, but not limited to, adoption of a specific reimbursement schedule.

1 (c) *The State Department of Health Services shall establish a*
2 *reimbursement schedule shall set that sets forth a procedure and*
3 *reimbursement rates to reimburse local emergency medical*
4 *services providers and health care providers for their costs of*
5 *providing any of the following services to a person as a result of*
6 *nonoccupational exposure to pesticide drift:*

7 (1) *Emergency medical services, including, but not limited to,*
8 *transportation services.*

9 (2) *Medical evaluation and diagnosis.*

10 (3) *Immediate and ongoing treatment for conditions related to*
11 *the pesticide drift exposure.*

12 (d) *The State Department of Health Services may contract with*
13 *an agency to administer the claims processing for the medical*
14 *reimbursement of local emergency medical services providers and*
15 *health care providers.*

16 (e) *The Medical Reimbursement Account is hereby established*
17 *within the Department of Pesticide Regulation Fund:-*

18 ~~(e) The Director of Pesticide Regulation shall impose civil~~
19 ~~penalties against any person who violates Section 12971, 12972,~~
20 ~~or 12973 of the Food and Agricultural Code. The civil penalties~~
21 ~~shall be deposited into the Medical Reimbursement Account~~
22 ~~within the fund to be used, upon appropriation by the Legislature,~~
23 ~~to reimburse that account for actual and projected medical costs,~~
24 ~~including medical transport costs associated with a pesticide~~
25 ~~exposure incident as set forth in subdivisions (b) and (c)., the~~
26 ~~moneys in which shall be available for expenditure for purposes of~~
27 ~~this chapter upon appropriation by the Legislature.~~

28 (f) *In addition to the existing civil penalty authority in Section*
29 *12999.5 of the Food and Agricultural Code and Section 6130 of*
30 *Title 3 of the California Code of Regulations, the Department of*
31 *Pesticide Regulation, county agricultural commissioners, and*
32 *district attorneys may recover actual and projected medical costs,*
33 *including emergency medical transport resulting from a pesticide*
34 *exposure incident, as set forth in subdivisions (b) and (c), from any*
35 *person or business responsible for violations of Chapter 2*
36 *(commencing with Section 12751) or Chapter 3 (commencing with*
37 *Section 14001) of Division 7 of the Food and Agricultural Code,*
38 *or Sections 6000 through 6920 of Title 3 of the California Code of*
39 *Regulations, that cause or contribute to the pesticide exposure*
40 *incident in question. Money collected for recovery of medical costs*

1 *shall be paid into the Medical Reimbursement Account of the*
2 *Department of Pesticide Regulation Fund.*

3 105232. (a) The office shall develop and implement, in
4 cooperation with local health officers, the State Department of
5 Health Services, Occupational Health Branch, directly affected
6 community members, and state and local medical associations, a
7 program of medical education to alert physicians and surgeons,
8 interpreters, and other health care professionals to the symptoms,
9 diagnosis, treatment, and reporting of pesticide poisoning arising
10 from pesticide drift exposure, ~~and accessing information from the~~
11 ~~pesticide application registry~~ as set forth in subdivision (a) of
12 Section 105235.

13 (b) The office shall consult with the Emergency Medical
14 Services Authority regarding the adequacy of emergency services
15 personnel ~~training~~ *trainings* in responding to pesticide drift and
16 shall conduct annual training for emergency personnel, poison
17 control centers, physicians, interpreters, and staff of emergency
18 rooms, clinics, and county agricultural and health departments in
19 the 15 counties where soil fumigant use is the highest, in all of the
20 following areas:

21 (1) The effects of, and the recognition of acute and chronic
22 health symptoms of, pesticide drift exposure.

23 (2) The proper treatment of pesticide drift exposure with an
24 emphasis on soil fumigants.

25 (3) Pesticide illness reporting requirements and procedures.

26 (4) Processes available for the reimbursement of the costs of
27 medical treatment related to pesticide drift exposure.

28 (5) The inclusion of a cultural competency component.

29 (6) The pesticide drift exposure component of the local
30 hazardous response plans.

31 (c) The office shall recover its costs for the administration of
32 this section from the department.

33 105233. (a) The office, the department, and the State
34 Department of Health Services shall jointly develop and distribute
35 educational materials for the public and for health care personnel
36 explaining symptoms and treatment of illnesses or conditions
37 related to pesticide drift exposure for each of the 10 pesticides that
38 present the greatest pesticide drift problem and each soil fumigant
39 used in California. The pesticide information shall be in a form that

1 is both understandable by, and accessible to, the intended
2 recipients.

3 (b) The office shall allocate funds, in the form of grants or
4 contracts, to eligible state and local agencies, educational
5 institutions, and nonprofit corporations to defray the cost of
6 providing pesticide drift exposure training for emergency medical
7 personnel, including, but not limited to, instructional supplies and
8 trainee expense reimbursement.

9 (c) The office and the relevant state licensing agencies shall
10 cooperate to establish continuing medical education courses and
11 related training materials for physicians and surgeons and nurses
12 regarding pesticide drift exposure *and consult with the California*
13 *Specialized Training Institute (CSTI) in the Office of Emergency*
14 *Services to add training in responding to pesticide drift to*
15 *hazardous materials courses.*

16 (d) The office shall recover its costs for the administration of
17 this section from the department.

18 105234. (a) The agency with the advice and assistance of the
19 department, the office, county agricultural commissioners, local
20 health officers, *the CUPAs*, and directly affected community
21 members, shall by August 31, 2005, establish minimum standard
22 protocols for the purposes of ~~this chapter~~ *amending CUPA area*
23 *plans.*

24 (b) The protocols shall include, but not be limited to, all of the
25 following:

26 (1) Protocols for requesting and providing immediate access to
27 pesticide-specific information necessary to assist emergency
28 medical services personnel in identifying pesticides that may be
29 causing a pesticide drift exposure incident and appropriate
30 treatments, *including a 24-hour accessible telephone number for*
31 *contacting the applicator listed on the notice of intent.*

32 (2) Protocols to delineate specific agency responsibilities and
33 the process for responding to calls, notifying residents, and
34 coordinating evacuation, if needed.

35 (3) Protocols to establish emergency shelter procedures and
36 locations to be used in the event evacuation is needed.

37 (4) Protocols to access services in all languages known to be
38 spoken in the affected area in accordance with Section 11135 of the
39 Government Code.

1 (5) Protocols to ensure access to health care within 24 hours of
2 the exposure and up to a week after the exposure.

3 (c) The CUPA or administering agency shall amend the area
4 plan for emergency response, pursuant to subdivision (c) of
5 Section 25503, to specifically address pesticide drift exposure and
6 to incorporate provisions conforming the area plans to the
7 protocols of subdivision (b).

8 (d) By July 1, 2006, or upon review of the area plan, whichever
9 is sooner, all CUPAs or administering agencies shall have
10 incorporated a pesticide drift component into their area plans.

11 ~~(e) The agency shall recover its costs related to this section~~
12 ~~from ____.~~

13 *(e) The minimum standard protocols developed under*
14 *subdivision (a) are not subject to the requirements of Chapter 3.5*
15 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
16 *2 of the Government Code.*

17 *(f) The minimum standard protocols developed under*
18 *subdivision (a) shall be in accordance with the California*
19 *Environmental Protection Agency's environmental justice*
20 *guidelines.*

21 105235. (a) The department in conjunction with county
22 agricultural commissioners shall establish a pesticide application
23 public accessibility pilot program of online posting of notices of
24 intent and notices of completion for fumigant applications.

25 (b) The accessibility pilot shall be accessible to the department,
26 the commissioners, county environmental health, and emergency
27 medical personnel and the general public with some mapping
28 capacity to enable agencies to determine if any fumigant
29 applications are located within several miles of a complaint of
30 illness, odor, or other indicators of pesticide drift.

31 (c) The accessibility pilot shall include an Internet site and a
32 24-hour accessible telephone hotline for contacting the applicator
33 listed on the notice of intent.

34 (d) The accessibility pilot shall take place in ~~the top 15 counties~~
35 ~~with the highest use of soil fumigants. ____ County.~~

36 (e) The department shall implement the accessibility pilot by
37 September 1, 2005.

38 105236. (a) There is hereby imposed a drift fee ~~on the first~~
39 ~~point of sale on all of the following:~~

1 ~~(1) Manufacturers and other persons who directly produce any~~
2 ~~restricted use pesticide for application in this state.~~

3 ~~(2) Any business or person who is in nonretail business and~~
4 ~~who distributes within this state any pesticide for application in~~
5 ~~this state.~~

6 ~~(b) The department shall, by regulation, establish an~~
7 ~~appropriate fee schedule to be assessed on manufacturers and~~
8 ~~distributors.~~

9 ~~(c) Notwithstanding the scope of activity mandated by this~~
10 ~~chapter, in no event shall this chapter be interpreted to require~~
11 ~~services necessitating expenditures in any fiscal year in excess of~~
12 ~~the fees, and earnings therefrom, collected pursuant to this chapter.~~
13 ~~Except for startup activities initially funded from loans as set forth~~
14 ~~in Section 105239, this chapter shall be implemented only to the~~
15 ~~extent that fee revenues are available for expenditure for purposes~~
16 ~~of this chapter. surcharge on the mill assessment collected~~
17 ~~pursuant to Section 12841 of the Food and Agricultural Code.~~

18 ~~(b) The department shall not spend more than it collects from~~
19 ~~the drift fees surcharge and the earnings in implementing this~~
20 ~~chapter including repayment of startup loans.~~

21 ~~(d) chapter.~~

22 ~~(c) To the maximum extent practicable, the drift fees~~
23 ~~surcharges shall be assessed on the basis of a pesticide's~~
24 ~~responsibility for pesticide drift exposure. The drift fees~~
25 ~~surcharges shall be set in an amount necessary to fund the~~
26 ~~department's costs of regulating the drift caused by restricted use~~
27 ~~and nonrestricted use pesticides.~~

28 ~~(e) No fee shall be assessed upon any retailer of pesticides.~~

29 ~~(f) The annual fee~~

30 ~~(d) The annual surcharge~~ assessment shall be adjusted by the
31 department to reflect the increase in the annual average of the
32 California Consumer Price Index, as recorded by the Department
33 of Industrial Relations, for the most recent year available.

34 ~~(g) No fee~~

35 ~~(e) No surcharge~~ shall be assessed upon a party if that party
36 demonstrates to the department's satisfaction that the party merits
37 an exemption from this chapter because the party's conduct did not
38 contribute in any manner to the toxic effects of pesticide drift
39 exposure.

40 ~~(h)~~

(f) The department shall not collect fees *surcharges* pursuant to this chapter in excess of the amount reasonably anticipated by the department to fully implement Sections 105232 and 105233 *this chapter*. In no fiscal year shall the department collect more than _____ dollars (\$____) in fees 2 mills (\$0.002) in *surcharges*, as adjusted pursuant to subdivision (f) (d).

(i)–

(g) The department shall conduct a review every three years, beginning January 1, 2008, to determine the appropriate levels for assessing the fee *surcharge* pursuant to this chapter.

105237. (a) ~~All fees~~ *All surcharges* collected pursuant to this chapter shall be deposited into the Education and Administration Account which is established within the fund, and all interest earned on the moneys that have been deposited into the account shall be retained in the account.

(b) ~~All funds in the Education and Administration Account are to be used exclusively for the costs set forth in Sections 105232 and 105233.~~

(c) ~~Notwithstanding Section 13340 of the Government Code, all moneys deposited into the Education and Administration Account pursuant to subdivision (b) are hereby continuously appropriated to the department exclusively for the purposes set forth in subdivision (b). fund. The revenue derived from the surcharges shall be available for expenditure for purposes of this chapter upon appropriation by the Legislature.~~

105238. The department shall enter into interagency agreements with the office, the agency, the State Department of Health Services, and the Emergency Medical Services Authority to annually pay those agencies, from moneys within the fund, their share of the state costs of administering this chapter, and shall enter into reimbursement agreements with local agencies to annually reimburse those agencies, from moneys within the fund, for their state-mandated local costs of administering and complying with this chapter.

105239. (a) ~~It is the intent of the Legislature, in subsequent legislation, to appropriate to the Controller from the General Fund the sum of _____ dollars (\$____) for deposit into the Education and Administration Account within the fund for allocation as a loan, to the office for the purposes of adopting regulations to establish~~

1 ~~the fee schedule authorized by this chapter and for startup costs~~
2 ~~related to implementing this chapter.~~

3 ~~(b) It is the intent of the Legislature that the office fully repay~~
4 ~~the amount of this loan with interest at the pooled money~~
5 ~~investment rate, from fees collected pursuant to this chapter.~~

6 105240. The adoption, amendment, or repeal of a regulation
7 for implementing this chapter, including, but not limited to, fee
8 assessment and collection, and subsequent amendments or
9 adjustments authorized by this chapter, are hereby deemed to be
10 emergency regulations necessary for the immediate preservation
11 of the public peace, health, and safety or general welfare.
12 Regulations adopted, amended, or repealed pursuant to this
13 chapter are hereby exempted from the rulemaking provisions of
14 the Administrative Procedure Act (Chapter 3.5 (commencing with
15 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
16 Code). However, upon adoption, the regulation, amendment, or
17 repeal shall be filed with the Secretary of State and printed in the
18 California Code of Regulations.

19 SEC. 2. Notwithstanding Part 7 (commencing with Section
20 17500) of Division 4 of Title 2 of the Government Code,
21 reimbursement of local costs mandated by this act shall be made
22 by the Department of Pesticide Regulation from funds in the
23 Education and Administration Account within the Department of
24 Pesticide Regulation Fund, pursuant to reimbursement
25 agreements entered into with local agencies, under Chapter 3.5
26 (commencing with Section 10523) of Part 5 of Division 103 of the
27 Health and Safety Code.

28 However, notwithstanding Part 7 (commencing with Section
29 17500) of Division 4 of Title 2 of the Government Code, if the
30 Commission on State Mandates determines that this act contains
31 other nonreimbursed costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code. If the statewide cost of the
35 claim for reimbursement does not exceed one million dollars
36 (\$1,000,000), reimbursement shall be made from the State
37 Mandates Claims Fund.

O